JD–52–14
Pittsburgh, PA

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
DIVISION OF JUDGES

WEXFORD HEALTH SOURCES, INC.

and Case 04–CA–115974

NATIONAL UNION OF HOSPITAL & HEALTH CARE EMPLOYEES, DISTRICT 1199C, AFCSME, AFL-CIO

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for the Charging Party.

DECISION

STATEMENT OF THE CASE

SUSAN A. FLYNN, Administrative Law Judge. This case was tried in Philadelphia, Pennsylvania, on April 28, 2014. The Union filed the charge on October 29, 2013, and the General Counsel issued the complaint on January 16, 2014. The Respondent filed an answer denying all material allegations and asserting several affirmative defenses.[1]

The complaint alleges that the Respondent violated Section 8(a)(5) and (1) of the Act when, after adopting the collective-bargaining agreements of its predecessor employer both explicitly and by its conduct, it repudiated and failed to comply with the contracts since August 27, 2013. The complaint further alleges that the Respondent made unilateral changes without notifying the Union and affording it the opportunity to bargain when it announced on October 15, 2013, that the day after Thanksgiving was no longer a paid holiday and replaced it with Veterans Day.

After the trial, the General Counsel, the Respondent, and the Charging Party filed briefs,[2] which I have read and considered. Based on the entire record in this case, I make the following

[1] At the trial, the Respondent amended its answer to admit paragraphs 2(e) and 2(f) of the complaint. The parties also reached a stipulation regarding Karen Merritt's status as a supervisor and an agent within the meaning of the Act.

[2] The Union filed a Motion to Strike portions of the Respondent's Brief, asserting that certain statements are not supported by the record. The Respondent replied in opposition. I am denying the motion since counsel is simply making arguments and I will determine the facts in the case.

FINDINGS OF FACT

I. JURISDICTION

Wexford Health Sources, Inc. is a corporation headquartered in Pittsburgh, Pennsylvania, that provides health care services to inmates at correctional facilities (prisons, jails, and juvenile detention centers) nationwide. During 2013, the Respondent received in excess of $50,000 for services it performed outside the Commonwealth of Pennsylvania. The Respondent admits, and I find, that it is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act and is a health care institution within the meaning of Section 2(14) of the Act.

I also find that the Union is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

A. BACKGROUND

Health care services to inmates incarcerated in Pennsylvania state correctional institutions are provided by contractors with the Commonwealth of Pennsylvania. Heretofore, the contract for those services had been awarded to Corizon, but that contract expired December 31, 2012. The contract was awarded to Wexford Health Sources, Inc. (the Respondent) effective January 1, 2013.

The health care employees at two of Pennsylvania's state correctional institutions, the State Correctional Institution at Chester (Chester or SCIC) and the State Correctional Institution at Graterford (Graterford or SCIG), are unionized. The National Union of Hospital and Healthcare Employees, District 1199C, AFSCME, AFL–CIO (the Union) was certified as the collective-bargaining representative for bargaining units at each of those facilities on December 30, 2010, and March 28, 2011, respectively. (GC Exh. 2, 3.)[3] Corizon entered into collective-bargaining agreements with the Union at those facilities, which were effective January 1, 2012 through December 31, 2014. (GC Exh. 4 and 5.)

B. THE COLLECTIVE-BARGAINING AGREEMENTS

Many sections of the collective-bargaining agreements are nonspecific as to benefits or policies, but simply reference "the company's plan" or "as it currently exists." Most of the specifics of those terms and conditions were contained in the Corizon employee success guide, but that handbook was not incorporated by reference into the contracts. (GC Exh. 4, 5, 6.)

[3] At the time of certification, the employer was PHS Correctional Healthcare, which was subsequently purchased by Corizon. (Tr. 15.)

C. Union Officials

The Administrative Organizer for the Union, who also performs Business Agent duties, is Gary McCormick. The Executive Vice President for the Union is Peter Gould.

D. Successor Employer

The Respondent's Senior Vice President for Human Resources and Risk Management is Elaine Gedman. One of her subordinates is Labor Relations Specialist Robert Bodnar. The Respondent's National Business Development and Client Relations Director is Rick Dull, and its Eastern Pennsylvania Regional Manager is Karen Merritt.

Gedman's department was responsible for hiring employees for the Respondent's operations at the prisons. In October 2012, the Respondent mailed to all Corizon employees a letter of introduction and Frequently Asked Questions, outlining the Respondent's benefits and policies. (R. Exh. 2; Tr. 138, 139.) It included the 2013 holiday schedule, with eight paid holidays listed. If interested in employment with the Respondent, employees were to complete an Employee Transition Form that was provided. Subsequently, in October or November 2012, the Respondent met with the employees at Graterford and Chester to discuss the upcoming changes. (Tr. 138, 145.)

On November 12, 2012, the Respondent sent prospective employees (including any current Corizon employees who had submitted the Employee Transition Form) an offer of employment letter. (GC Exh. 29.) The offer letter advised the employees that their start date would be their first day as an employee of the Respondent, or January 1, 2013. It set their hourly pay rate[4] and noted their eligibility for future pay increases according to the collective-bargaining agreement. The letter stated that employees were eligible to participate in benefits as detailed in the enclosed handbook. An information packet was provided, guiding them through the employee enrollment process, including various forms necessary for new hires to complete as well as the Respondent's employee handbook that outlined the company's benefits and policies. (GC Exh. 28, 29.) Employees who accepted the offer of employment were required to sign an attached form accepting the terms of the job offer, including noting that the Respondent is an at-will employer that could terminate the employee's employment for cause with no notice. The first page of the handbook, dated September 1, 2004, advised bargaining unit employees that where there were differences between the handbook and the collective-bargaining agreement, the collective-bargaining agreement takes precedence. (GC Exh. 28, p. 2.)

Most of the employees hired by the Respondent had been Corizon employees.[5]

[4] The hourly pay rates were what the employee was earning with Corizon. They were not necessarily consistent with the pay tables in the collective-bargaining agreements. Gedman testified that her team noted discrepancies, but did not know the reason for them. The Respondent continued to pay those employees the same rate they had been paid with Corizon, regardless of the pay tables, but with a 2 percent increase as of January 1, 2013. (Tr. 126–127, 132–133.)

[5] Gedman estimated that the Respondent hired 98 percent of the Corizon employees, but no evidence was presented as to how many non-Corizon employees were hired, although there were some. (Tr. 129.)

E. Discussions Regarding the Collective-Bargaining Agreements

Discussions Prior to Takeover

In anticipation of the January 1 change, the Department of Corrections provided Gedman with unsigned copies of the two Corizon collective-bargaining agreements. However, Gedman was not given Corizon's handbook, so she did not know what specific benefits Corizon had provided, since they were not explained in the contracts. (Tr. 136–137.)

Union Executive Vice President Gould wrote to Gedman on December 3, 2012, indicating his understanding that the Respondent would recognize most of the terms of the Corizon collective-bargaining agreements. (R. Exh. 1.) He requested information regarding pay and benefits offered by the Respondent and a copy of the employee handbook. Gedman sent Gould the information he had requested; she believed he also received the Frequently Asked Questions handout about the Respondent's benefits. (Tr. 138.)

Union Administrative Organizer McCormick contacted Gedman by telephone on December 7, 2012. They introduced themselves and Gedman said the Respondent would honor the existing collective-bargaining agreements. (Tr. 20, 137–138.) She requested clean copies of the two agreements so that she could sign off on them. McCormick asked her what company name should be on the contracts, and Gedman said Wexford Health Sources, Inc. She also requested the union dues formula sheets. McCormick said the Union would have the members sign new dues check-off cards, that he would forward to her. They then discussed areas where the Respondent's benefits differed from the benefits in the contract or that had been provided by Corizon.[6] Gedman advised McCormick that the Respondent does not offer 401(k) employer contributions or tuition reimbursement, and said that she would forward to him copies of the educational benefits that the Respondent offered its employees (continuing medical education and Care to Learn). She said that the two doctors at SCIG who did not work full-time could be eligible for benefits from the Respondent that they had not received from Corizon, as the Respondent required that they work only 30 hours per week, rather than Corizon's 36 hours, to qualify. Regarding paid time off (PTO), Gedman stated that the Respondent would apply January 1, 2013, as the employees' seniority date (not their original date of hire with the prison as Corizon had done), as that was their date of hire with the Respondent, and would offer them the initial paid time off benefits level unless the contract said otherwise. McCormick raised the issue of the nurses at Chester self-scheduling, and said it had been working well. Gedman said she would look into it and get feedback from her managers before addressing that. McCormick requested that the Respondent continue to permit doctors and mid-level medical providers (physician assistants and nurse practitioners) to take compensatory time during the week after they worked weekends (weekend rounding). If they worked any portion of either Saturday or Sunday, Corizon had allowed them to take a full day off during the week. Gedman said she

[6] While Gedman testified that they did not go into detail about the differences in benefits on this call Tr. 137), I credit McCormick's testimony that they did review some basic differences at that time. While Gedman's memory seems faulty on this, McCormick was certain of the discussion and provided details of the conversation. Moreover, the weekend rounding proposal that Gedman sent on December 11, 2012, prior to the December 20 meeting, supports McCormick's testimony. (GC Exh. 7.)

would send McCormick a proposal as to that; she agreed they could take some time off during the week, but said there might be times when they would have to be charged leave. They agreed to meet in-person at the Philadelphia airport to continue the discussions. (Tr. 20–24.)

McCormick never sent Gedman the contracts to be signed by the Respondent. (Tr. 23, 93.)

On December 11, 2012, Gedman emailed McCormick the Respondent's proposal for weekend rounding as they had discussed. (GC Exh. 7).

On December 20, 2012, representatives of the Union and the Respondent met at a hotel near the Philadelphia airport. Present for the Union were Administrative Organizer McCormick and Executive Vice President Gould. Present for the Respondent were Senior Vice President for Human Resources and Risk Management Gedman, Labor Relations Specialist Bodnar, and National Business Development and Client Relations Director Dull. After they introduced themselves, Gedman again stated that the Respondent would honor the collective-bargaining agreements, and said she had reviewed the contracts. (Tr. 25, 111.) However, since the contracts did not include the specific benefits provided by Corizon, Gedman asked for details about those benefits. Gould reviewed the benefits that had been provided by Corizon (e.g., health care, paid time off, 401(k) contributions, tuition reimbursement, continuing medical education, full-time vs. part-time hours, paid holidays, weekend rounding), and said they would send Corizon's employee handbook to her. (Tr. 83–88, 113, 141, 146–147; GC Exh. 6.) Gedman stated that the Respondent's benefits were different, and the Respondent's benefits would be implemented. (Tr. 80-81, 88, 91–92, 111–113, 147–148.) Gedman testified that she read the language regarding "the company's benefits as they currently exist" or "as the benefit currently exists" to mean as the Respondent's benefits currently exist, and that was what she told the others at that meeting. (Tr. 138.) She further testified that the Union indicated that where the contract read "the company's current benefits," it meant Corizon's benefits. (Tr. 148.) Gedman replied that the Respondent would not implement Corizon's plans and policies. She advised the Union that the Respondent's current benefits would be offered to the employees as of January 1, as that was only 11 days away. (Tr. 25–27, 147.) Gedman also noted that January 1 would be the employees' seniority date. However, the parties agreed to exchange information and continue negotiations. The Union requested a list of the health care providers offered by the Respondent, but Gedman advised them that the Respondent is self-insured and that she would send their plans. They also discussed the grievance procedure and the Union dues formula. McCormick noted his concern about one of the managers at SCIG, as employees had questioned her competence, and Gedman agreed to look into the situation. Additionally, Gedman advised the Union that the Respondent would be eliminating many clinical coordinator positions statewide, in the next 12–18 months. She did not know which facilities would be affected, and the Union was concerned because one of the clinical coordinators was at SCIG.

On December 27, Bodnar sent McCormick a summary of the Respondent's three health plan options and the new hire packet that included the employee handbook and the health benefits booklet. (GC Exh. 8.) McCormick sent the Respondent the Corizon employee manual. (Tr. 26, 80; GC Exh. 6.)

Discussions After Takeover

On January 1, 2013, the Respondent began providing health care to inmates at Pennsylvania state correctional facilities, including Chester and Graterford. As of January 1, 2013, the Respondent implemented its benefits programs as outlined in its employee information packet and handbook. (GC Exh. 28; Tr. 94–95.) Additionally, a new weekend rounding policy was implemented, different from Corizon's policy, but also different than the Respondent's initial proposal had been. (Tr. 95, GC Exh. 6.) However, raises for 2013 were given as provided in the Corizon collective-bargaining agreements and as had been set forth in the offers of employment. Further, the Respondent maintained Corizon's 36-hour workweek as the threshold for full-time benefits. (Tr. 154.) Nonclinical employees' work hours were cut from 40 to 37 ½ hours per week, as Gedman had advised was mandated by the Commonwealth of Pennsylvania. (Tr. 96.)

On January 7, 2013, McCormick sent Gedman the first set of new dues check-off cards and instructions for the dues deductions. (GC Exh. 9.) Gedman acknowledged receiving the cards on January 9.

On January 21, Gedman emailed McCormick and Bodnar, suggesting a conference call to discuss her thoughts about the Corizon employee handbook policies. (GC Exh. 10.) They agreed to talk on February 1. McCormick also raised a problem with an employee at Chester not receiving her paycheck. (Tr. 30.)

On February 1, 2013, McCormick and Gedman spoke again about a number of individual employee issues, and continued to discuss benefits policies. For example, as to PTO, Gedman said they could not honor the length of service each employee had at that institution because that had not been budgeted for in their bid. However, she would consider allowing employees to take off the additional number of days they had under the collective-bargaining agreements, but unpaid and for the first year of the contract only. The Respondent did not make contributions to employees' 401(k) plans as Corizon had, preferring to put that money toward making the medical plan more affordable for employees. Gedman agreed to consider continuing the Corizon tuition benefit (tuition reimbursement up to a $10,000 cap) for those employees already enrolled in school, and she requested a list of those individuals. Where Corizon had paid for continuing medical education courses, Gedman felt that was unnecessary since so many courses were offered online at no cost. Instead, she agreed to pay the fees for employees to renew their licenses. She also agreed to look into providing space at each prison for upcoming union officer elections, so employees could vote during breaks. On January 1, 2013, the workweek for nonclinical employees was cut from 40 to 37 ½ hours. That decision had been made by the state, not by the Respondent. Gedman advised that despite working fewer hours, affected employees at the nonunion prisons in Pennsylvania would continue to receive their 2012 gross pay in 2013, but that they would probably not receive a pay raise in 2014. She stated that the Respondent might consider a similar deal for the union employees, whereby if they agreed to forego raises for 2013 and 2014, they would receive the same weekly gross pay they had in 2012. They discussed the benefits threshold. Under Corizon, it had been necessary to work 36 hours to be eligible for full-time benefits; at the Respondent, it was only 30 hours. Gedman agreed to consider giving the union employees that benefit as well. McCormick raised concerns about

specific situations, such as a new policy that had apparently begun at SCIG, requiring employees to clock out and in for lunch. McCormick again raised the situation about an incompetent manager at SCIG and Gedman agreed to look into that further. They also discussed obtaining additional hours for one employee at SCIC, to get her to the 30-hour threshold, and for another at SCIG, whose hours were threatened as the oncology work she performed that increased her regular hours may be moved to Pittsburgh. (Tr. 31–37.)

The communications between the Union and the Respondent remained cordial and cooperative. The Union requested a list of all bargaining unit members at both prisons, including job classification, status as full-time, part-time, or PRN[7], and home address. (Tr. 37–38.) On February 4, Gedman sent McCormick a list of employees hired and terminated in the month of January 2013. (GC Exh. 11.) All the employees listed had been hired on January 1, 2013, and no employees were terminated that month. The email noted that future monthly reports would be submitted on the 15th of each month. It also noted that union dues would not be deducted until February 16; since the amounts due are based on the number of hours worked that month by the employee, dues could not be determined until pay was calculated. In addition, dues would not be deducted until new authorization cards were received.

On February 8, Gedman emailed McCormick information that had been requested in their February 1 telephone call regarding several specific situations at the prisons. (GC Exh. 12.) She closed by stating that she waited to hear from him regarding next steps on the other items discussed (benefits), and she requested contact information on the Union employment service.

On February 22, 2013, McCormick responded to Gedman, outlining the Union's position on the various items they had discussed, noting those on which tentative agreements had been reached (30-hour threshold for benefits and Union acceptance of the Respondent's health insurance plans). He also noted items still under discussion (continuing medical education courses and tuition reimbursement, reduction of nonclinical employees' workweek from 40 to 37½ hours, seniority) and areas of concern, where the Respondent was not in compliance with the contract, such as paid time off and the 401(k) savings plan. He reminded Gedman that her position on these matters and the action of implementing the Respondent's policies, contradicted her statements that she would honor the contracts. He said that the Respondent's offer was not an acceptance of the contracts and recognition of the benefits "as they currently exist." However, he attempted to maintain a cooperative approach, and concluded by saying that they were making progress toward reaching a common understanding. (GC Exh. 13.)

On April 19, McCormick emailed Gedman, asking when she would reply as to the open issues. (GC Exh. 14.) Gedman responded that she was having difficulty coming up with options.

McCormick wanted the Respondent to implement the various agreements that he and Gedman had reached, as they went along. However, Gedman's position was that, unless and until a total package was agreed to with the union, no changes would be made. (Tr. 43, 74, 97, 150.)

McCormick testified that although the Respondent was not in complete compliance with the contracts, he did not file grievances because he was trying to establish a productive

[7] PRN is a Latin phrase, pro re nata, that means "as needed" or "as the situation arises."

relationship with the new employer, and to resolve issues by talking things out. He felt they were making progress toward resolving those issues. Further, some of the benefits offered by the Respondent were more favorable to the employees than what was contained in the contracts or than had been provided by Corizon. Therefore, strict contract compliance was not in the Union's interest.

F. Union Grievances and Respondent's Response

McCormick advised Gedman by telephone that he would be filing grievances, as the employees were becoming frustrated with the situation, because outstanding issues were not yet resolved. However, he told Gedman that he wanted to continue their discussions. (Tr. 49.) Therefore, on May 2, McCormick filed class action grievances on behalf of the SCIC and SCIG employees alleging that the Respondent was not complying with the contracts with respect to paid time off, 401(k) contributions, educational benefits, scheduling, and seniority. (GC Exh. 15, 16.)

McCormick also filed a grievance on May 23, 2013, on behalf of nurses at SCIC who were bypassed when the Respondent hired another employee with less seniority instead. (GC Exh 17, p. 14; Tr. 50.) That grievance was also filed as a class action and therefore went straight to Step 2. Karen Merritt represented the Respondent on that grievance. She and McCormick attempted to agree to a location and date for the grievance meeting, but none was ever scheduled or held. (GC Exh. 17.)

Nonetheless, McCormick and Gedman continued to discuss and attempt to resolve various individual matters as they arose. (GC Exh. 18, 19, 25; Tr. 53–55, 57–58, 59–60.) McCormick sent Gedman an email on May 28. (GC Exh. 17.) He confirmed the tentative agreement they had reached regarding the pay rate for the lead medical records technician position. He further thanked her for looking into an issue regarding bonus pay for SCIC nurses. As was the case with all tentative agreements they reached, McCormick noted that the medical records technician agreement was subject to their agreement on the other matters. McCormick testified that he was referring to the outstanding issues on which they had not reached agreement, such as 401(k) contributions, paid time off, and educational benefits. (Tr. 55.)

Finally, on July 29, McCormick told Gedman that he had concluded they were unable to resolve the outstanding issues. He asked if she would waive the first hearing of the grievance process for the May 2 class action grievances and agree to go directly to arbitration. Gedman agreed there was no point to that hearing since she was the decision maker for the Respondent, so they could go to arbitration about the benefit items they had been discussing, but not any new items, that is, only as to the items defined in the collective-bargaining agreements "as they currently exist." (Tr. 59.) McCormick said he would forward the Union's position regarding waiving the grievance hearing in writing, which he did on August 9. (GC Exh. 20.) Gedman responded on August 27, stating "Regarding your communication below, Wexford Health has been willing to meet and negotiate in good faith, as we have been since December 2013. In doing so, if you do not agree with our interpretation of the former CBA, then we do not have an Agreement under which to file a grievance." (GC Exh. 20.)

Similarly, on September 1, Merritt advised McCormick that there would be no grievance hearing on the May 23 class action grievance since there was no contract. (GC Exh. 17; Tr. 51.) She indicated openness to discussing how to resolve issues going forward.

McCormick continued to file grievances on behalf of the employees. (GC Exh. 22, 23, 24, 25.) However, no grievance meetings ever occurred, as the Respondent's response to each new grievance included a statement that it would not participate since there was no collective-bargaining agreement. (Tr. 101, 152.)

A class action grievance was filed on October 10, 2013, regarding physicians' status change from nonexempt hourly employees to exempt salaried employees. (GC Exh. 22.) Individual grievances were filed on October 10, 2013, and on February 14, 2014, regarding terminations. (GC Exh. 23, 24.) A class action grievance was filed on March 17, 2014, regarding pay rates for medical assistants and medical records clerks at Chester. (GC Exh. 25.)

In January 2014, all the Respondent's employees, union and nonunion, received a pay raise of 2 percent. (Tr. 130.)

In sum, the Respondent advised employees of its benefits and policies in October and November 2012, and implemented most of those benefits and policies when it took over operations from Corizon in January 2013. However, it has complied with certain contract provisions: annual raises, bonuses to registered nurses and licensed practical nurses who volunteered for extra shifts, checking-off union dues and remitting those dues to the Union albeit with an initial one month break and pending receipt of new authorization cards, and submitting monthly hire/fire reports to the Union. It also continued the contract policy that full time employees must work 36 hours in order to be eligible for benefits, rather than the Respondent's policy of 30 hours. (Tr. 154.) Although there was no explicit testimony about other terms, there are union delegates. (Tr. 75; GC Exh. 23, 26.) However, the Respondent either did not comply with contract terms regarding or did not provide the same benefits as Corizon with respect to pay rates, paid time off, seniority, scheduling, weekend rounding (where several different options were tried, per Gedman (Tr. 146)), 401(k) contributions, continuing medical education courses, and tuition reimbursement. The parties bargained over those subjects from December 2012 to July 2013, reaching some tentative agreements that were never implemented. The Union considered these to be contract violations rather than repudiation of the contracts in toto, as the Respondent did comply with some contract terms. (GC Exh. 13.) Therefore, the Union began filing grievances, that were not processed by the Respondent.

G. Change to Paid Holidays

Although the number and dates of paid holidays were not specified in the collective-bargaining agreements, it had been Corizon's practice to give the employees six paid holidays, including the day after Thanksgiving.[8] (Tr. 71.)

[8] I note that the Corizon handbook lists seven premium pay holidays, for which employees who worked were paid time and a half: New Year's Day, Martin Luther King Jr. Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day, and Christmas Day. (GC Exh. 6, p. 40.) The handbook does not specify the six paid holidays.

Before the Respondent took over operations from Corizon, it presented its proposed holiday schedule for 2013 to the Department of Corrections for approval. Initially, that was granted and employees were notified of the 2013 holiday schedule in October 2012. (R. Exh. 2.) There were eight such holidays. However, sometime in October 2013, the Department of Corrections notified the Respondent that it would not permit the day after Thanksgiving to be a paid holiday with a skeleton staff because the officers and others who were state employees did not have that day off. Gedman decided to swap another day for that day and chose Veterans Day. (Tr. 124–125.)

On October 15, 2013, she issued an email to all the Respondent's employees in Pennsylvania correctional facilities, as follows.

> To accommodate the PA DOC's requirement that we conduct normal business operations on the day after Thanksgiving, we will change our holiday schedule for this year and every year going forward to recognize Veteran's Day, November 11, 2013 instead of the day after Thanksgiving. Employees may request PTO for the day after Thanksgiving; however, it will need to be approved by management to ensure that operational needs are able to be met.
>
> The revised holiday schedule for the remainder of 2013 is:
>
> | | |
> |---|---|
> | Veterans Day | November 11, 2013 |
> | Thanksgiving | November 28, 2013 |
> | Christmas | December 25, 2013 |
>
> The holiday schedule for 2014 will be published in the near future. We apologize for any inconvenience that this mandatory change may cause. Thank you for your understanding and cooperation. (GC Exh. 26, p. 1.)

Shortly thereafter, an employee at SCIC called McCormick and advised him that the Respondent had notified the employees of that change in paid holidays. McCormick contacted Gedman, who stated that she had received notice from the state that the day after Thanksgiving was not permissible as a paid holiday, since it was a regular workday for the nonunion employees. She said she wanted to replace that day but that, since it was late in the year, she had limited options. Veterans Day seemed to her the best alternative, but she invited suggestions from the Union. (Tr. 104, 126.) McCormick filed a grievance on behalf of each facility on that action, requesting that Wexford comply with the contract in that regard. Bodnar replied that there was no contract between them so the grievance would not be processed. Bodnar further noted that the collective-bargaining agreements did not specify any holidays. (GC Exh. 26, p. 2–5.)

H. The Parties' Positions

The General Counsel argues that the Respondent adopted the Corizon collective-bargaining agreements, both explicitly when Gedman said that the Respondent would honor the contracts and by its conduct when it complied with certain significant contract terms.

The Respondent contends that it did not adopt the Corizon collective-bargaining agreements, but rather implemented its own terms and conditions of employment from the outset. It asserts that it notified the employees and the Union of those new terms and conditions, and then began negotiating with the Union over the terms of new contracts in December 2012. It further asserts it could not have adopted the contracts, since there was no meeting of the minds between the parties as to the interpretation of the contracts, and the parties' negotiations for new contract agreements were not successful.

III. Discussion and Analysis

A. Did the Respondent adopt the Corizon collective-bargaining agreements?

The Respondent was a successor employer to Corizon. As such, although it was bound to recognize and bargain with the Union, it was not bound by the substantive provisions of the collective-bargaining agreements that were negotiated by Corizon. It had the right to adopt the predecessor employer's contracts or to implement its own terms and conditions at the outset and then negotiate with the Union. *NLRB v. Burns Security Services*, 406 U.S. 272, 294–295 (1972).

Adoption of a contract may be demonstrated either explicitly or by conduct. It is well-settled that the standard of proof for finding an adoption by conduct is clear and convincing evidence. *Resco Products*, 331 NLRB 1546, 1549 (2000); *Brookville Health Care Center*, 337 NLRB 1064, 1064–1065 (2002); *Field Bridge Associates*, 306 NLRB 322, 323 (1992), enfd. 982 F.2d 845 (2d Cir. 1993); *Eklund's Sweden House, Inc*., 203 NLRB 413 (1973).

In *Resco*, the Board reversed the Administrative Law Judge's finding that the respondent had adopted the vacation pay and pension obligations in the predecessor contract. The Board determined that the manager's statement that it was "on the hook" for those payments was ambiguous, that there was insufficient evidence to find that the respondent had adopted any part of the contract, and, in any event, a successor cannot adopt one or two portions of the contract, but either the entire contract or none of it, absent an agreement with the union.

Conversely, in *Brookville*, the respondent implemented all the terms of the prior collective-bargaining agreement and a Memorandum of Understanding, with the sole exception of an annual uniform allowance. The respondent never advised the union that it rejected the contract, or that it had problems with any clauses. The uniform allowance was an annual obligation, with no set date for payment to the employees. Therefore, the fact that it was not paid by a particular date did not raise any red flags. Further, the respondent did not engage in any negotiations for a new contract. The Board relied on three factors to find that the respondent had adopted the predecessor's contract:

1. the respondent's failure to expressly reject the contract or any of its terms;
2. the respondent's compliance with all of the contract terms, including contractually required mid-term changes, and the union-security and dues check-off provisions; and
3. the respondent's participation in two arbitration proceedings without asserting as a defense the absence of a binding contract between the parties.

Brookville at 1065. The Board noted that "… a successor employer has the freedom to reject the predecessor's contract. (citation omitted) But if it exercises that right, it is obligated to bargain with the union over a new agreement. Here, the Respondent did nothing to indicate that it was exercising that right and, as detailed, its conduct was completely inconsistent with doing so." *Brookville* at 1066.

The Board found that the respondent in *Field Bridge* did not adopt the predecessor's contract as the evidence of adoption was ambiguous. The administrative law judge determined that both parties wished to negotiate new terms, and the union did not seek to bind the respondent to the contract's terms until long after the property transfer. The Board stated that "we have consistently exercised restraint in applying an assumption-of-the-contract theory. We require clear and convincing evidence, either actual or constructive, before we will find that an assumption of the contract occurred." *Field Bridge* at 323.

In *Eklund's Sweden House Inn,* the respondent had been a motel, restaurant and bar, that had ceased doing business as a restaurant and bar before ownership changed. The manager advised the union that the terms and conditions of employment would remain the same, and continued to check off dues despite a clause in the agreement of sale that stated it was not a successor and was not adopting the collective-bargaining agreement. However, about 6 weeks after the sale, the respondent's attorney stated that the prior terms and conditions would not continue, and it ceased deducting dues. The attorney met with the union and requested some changes to the prior collective-bargaining agreement. The union responded that it, too, would request some changes if the respondent was not adopting the contract as is. The respondent gave employees a raise, changed their break schedule, and set up a coffee pot for them, all without notifying the union. The new owner met with the employees and assured them that conditions would improve under his ownership, and asked the employees whether they wanted their union dues deducted. All said no, but none signed a revocation. The Respondent then sent the union a letter saying there was no collective-bargaining agreement, and suggesting that a new Board election was in order, with a new, more appropriate, unit. The Board found that the employer had an obligation to recognize and bargain with the union before imposing any new wages or other terms and conditions, per *Burns,* above, and *Howard Johnson Company*, 198 NLRB No. 98 (1972). The Board also found that the respondent had adopted the collective-bargaining agreement by its conduct in that:

1. the manager consulted the contract to determine whether he could give the employees raises;
2. union dues were deducted the first month after the sale; and
3. the respondent's attorney had used the prior collective-bargaining agreement as the starting point in negotiations with the union.

Therefore, any statements to the contrary that the respondent had made, such as in the agreement of sale, were determined to be outweighed by its conduct.

In *U.S. Can Co.,* 305 NLRB 1127 (1992), enfd. 984 F.2d 863 (7th Cir. 1993), the successor employer was found to have adopted the predecessor's contract where it hired the predecessor's employees, failed to unambiguously reject the predecessor's contract at the outset, and implemented many of the contract provisions, including union-security and dues check-off. The company's vice president sent letters to the four union presidents, inviting them to meet and negotiate, but "in the interim, the terms and conditions including wages, benefits, and working conditions as they presently exist under the collective-bargaining agreement with the Continental Can Company shall remain in effect." The 7th Circuit noted that

> (C)heck-offs of dues and other payments from the employer to the union, like the enforcement of a union-security clause, depend on the existence of a real agreement with the union. 29 U.S.C. Section 186(c)(4); *Bethlehem Steel Co.,* 136 NLRB 1500, 1502 (1962), enfd in relevant part under the name *Marine Workers v. NLRB*, 320 F.2d 615, 619 (3d Cir. 1963); *Southwestern Steel & Supply, Inc. v. NLRB,* 806 F.2d 1111, 1114 (D.C. Cir. 1986); cf *Litton Financial Printing Div. v. NLRB*, 501 U.S. 190, 199 (1991). Otherwise, the payment of money is a subvention barred by 29 U.S.C. Section 186(a)(2), and the requirement to join the union (or pay dues to it) coerces employees in a way forbidden by 29 U.S.C. Section 158(a)(3). Having done things that are lawful only if a collective bargaining agreement is in force, U.S. Can is in a pickle. For neither labor law nor the common law of contracts permits one to rifle through terms, building a "contract" out of the ones you like while discarding the rest. You accept the other party's offer or you decline it; if you strikeout a single term, you are making a counteroffer, and unless the other party accepts that counteroffer, there is no contract. No one doubts that U.S. Can was making the union an offer—he terms of which were "the old agreement minus multiplant bargaining and the IPJO"—the union curtly refused, and no contract came about. If there was no contract, however, the check-offs and union security provisions were illegal.

U.S. Can at 869–870.[9]

Applying the principles set forth in these cases, as discussed below, I find it has not been established by clear and convincing evidence that the Respondent adopted the Corizon collective-bargaining agreements. While Gedman stated that the Respondent would honor the Corizon collective-bargaining agreements, and did implement certain significant portions of those contracts, she also made it clear from the outset that the Respondent would implement its own benefits, involving mandatory subjects of bargaining. The Respondent did implement those benefits, and immediately began negotiating with the Union over new terms.

i. Did the Respondent expressly reject the predecessor contracts or any of their terms?

[9] See also, *Bethlehem Steel Co*., 136 NLRB 1500, 1502 (1962), enfd. in pertinent part 320 F.2d 615, 619 (3d Cir. 1963).

The Respondent provided the Corizon employees with copies of its own benefits and policies in the handout dated October 12, 2012, and with the November 2012 offers of employment. The Respondent met with the employees in the Fall of 2012 and explained the new benefits and policies.

The Respondent enclosed its handbook with the offer of employment letters to employees in November 2012. The first page states that where the handbook conflicts with the collective-bargaining agreement, the collective-bargaining agreement takes precedence. However, on January 1, 2013, the Respondent began applying the benefits set forth in the handbook, with a few exceptions. Gedman testified that the handbook reference to a collective-bargaining agreement was to a future contract that had not been reached yet with the Union. I note that the handbook was not drafted for the Pennsylvania employees, but was dated September 2004.

Gedman had initially stated to the Union in December 2012 that the Respondent would honor the Corizon collective-bargaining agreements. However, her intention was to simply substitute the Respondent's benefits for Corizon's, as the contracts referenced only "what currently exists" or "the employer's plans." She had not been provided with any information regarding the Corizon benefits and had already issued the Respondent's benefits to prospective employees. As soon as Gedman became aware that the Union desired the Respondent to provide the same benefits as Corizon, she notified the Union that the Respondent was not adopting Corizon's policies, but would implement its own. The parties immediately began negotiating over new terms, which were mandatory subjects of bargaining. It is significant to note that Gedman stated, at the December 20 meeting, that the Respondent's benefits would be implemented initially, as the takeover date was rapidly approaching, and there was insufficient time to resolve their differences in negotiations. It is also important to note that the Union desired some changes as well when it learned that certain of the Respondent's policies were more beneficial to its members than Corizon's had been. The parties' negotiations over new terms and conditions signals that there was no existing contract; those discussions were contract bargaining sessions.

The Union was aware that the Respondent was not complying with the collective-bargaining agreements beginning on January 1, 2013, and noted that in correspondence with the Respondent. (GC Exh. 13, 14; Tr. 83–88, 141–147, 156.) Nonetheless, the Union took no action to file grievances or unfair labor practice charges for many months, until May 2013; rather, the Union continued to negotiate for new contract terms.

The General Counsel argues that Gedman did not explicitly tell the Union that the Respondent rejected the contracts. While she did not use those words, she did state unequivocally that the Respondent would implement its own benefits. That, and the Respondent's action in implementing its own terms, amount to such rejection. The General Counsel finds the Respondent's August 23, 2013, statement that it rejected the contracts unless the Union agreed to its interpretation to be further support for his adoption argument. I find it more in the nature of offering a compromise to resolve the dispute.

I find that despite Gedman's initial statements regarding honoring the contracts, her concurrent statements that the Respondent would implement its own benefits, as well as the actions of the Respondent beginning in October 2012, demonstrate that the Respondent rejected

the contracts under Corizon's terms and did not adopt Corizon's benefits. The Respondent implemented its own benefits on January 1, 2013. I find, therefore, that the Respondent rejected the predecessor collective-bargaining agreements on October 12, 2012, in November 2012, on December 7, 2012, on December 20, 2012, and on January 1, 2013.

ii. Did the Respondent comply with all or a majority of the contract terms, including union-security and dues check-off?

The Respondent did not comply with all or a majority of the contract terms. Specifically, it did not comply with the contracts where the collective-bargaining agreements referenced "the company's policies," that had been Corizon's company policies concerning benefits. Rather, it implemented most of its own policies from the outset. The Respondent did comply with some significant contract terms,[10] such as granting raises consistent with the collective-bargaining agreement pay charts, paying nurses bonuses, and using the 36-hour workweek as a threshold for eligibility for benefits. The Respondent did deduct union dues and remit that money to the Union, beginning in February 2013, but only after new authorization cards were submitted by the employees. There is no evidence that it enforced the union-security clause.

The Union did not file grievances until May 2013. The first two grievances charged the Respondent with contract noncompliance related to benefits, the same subjects over which they had been negotiating since December 2012.

iii. Did the Respondent participate in arbitration or grievance proceedings?

The Respondent did not participate in any arbitration or grievance proceedings on any grievances filed by the Union. There were no hearings on the merits of any grievance although logistical discussions attempting to schedule grievance hearings did occur initially.

iv. Did the Respondent use the predecessor's collective-bargaining agreements as the starting point for negotiations?

Gedman had initially stated that the Respondent would honor the Corizon collective-bargaining agreements, as she was satisfied with most of their terms, substituting the Respondent's benefits for Corizon's. Corizon's benefits were not specified in the collective-bargaining agreements. When advised what they were, in December 2012, Gedman explained what the Respondent offered and stated that the Respondent's benefits, not Corizon's, would be provided to the employees. The parties then began negotiations.

The Respondent did not use Corizon's benefits as a starting point; it rejected those terms and offered its own policies as the starting point for negotiations. The parties began negotiating in December 2012, shortly before the takeover, and continued those negotiations into 2013, but they were never able to reach an agreement as to new contracts.

[10] There was no testimony as to compliance with many of the contract terms, so I cannot determine whether there was or was not compliance.

While the Respondent's actions subsequent to the takeover must be examined, the Board has focused on the time period prior to and at the moment of takeover. See *Arden's*, 211 NLRB 501 (1974); *C.M.E., Inc.,* 225 NLRB 514 (1976). The Respondent had distributed its policies to the employees in October and November 2012; it met with the employees to explain those changes; it notified the Union that it would offer its own benefits; and on January 1, 2013, the Respondent implemented its own benefits, as set forth in its handbook.

The General Counsel cites *Gartner-Harf Co., Pagewood N.V., Pagewood Meat Packing Co., and GH Processed Beef, Inc.,* 308 NLRB 531, 541 (1992) to support his argument that the Respondent was bound by Gedman's statements that it would adopt the collective-bargaining agreements. However, the situations are not comparable, as Gedman did not unequivocally state that the predecessor contracts would continue in effect and then suddenly impose new terms and conditions when the economic situation changed. Likewise, *301 Holdings, LLC,* 340 NLRB 366, 368-370 (2003) and *World Evangelism, Inc.,* 248 NLRB 909, 917 (1980) are inapplicable. In *301 Holdings*, the new apartment building owner told his two carryover employees that their schedules would change, but said nothing about any other terms or conditions changing. In *World Evangelism*, the new owner was found to be a "perfectly clear" successor, unlike the instant case. That owner initially stated in writing that the contract would be terminated with the takeover. However, five maintenance employees threatened to quit unless the new owner assumed the prior contract, so the new owner told the union to put together a contract. The parties agreed to all but one clause, regarding religious discrimination.

The General Counsel cites *E.S.P. Concrete Pumping, Inc.*, 327 NLRB 711, 714 (1999) for the proposition that adoption of a contract may occur where the parties disagree as to contract interpretation. While there is a quote in *E.S.P.* from *Arco Electric Co. v. NLRB*, 618 F.2d 698 (10th Cir. 1980) that references adoption of an ambiguous contract, that was not an issue in the case. After the company owner's death in October 1989, his widow and son continued to operate the business and continued to apply the Bricklayers contract. They continued to hold themselves out as a union contractor, which was a prerequisite for these jobs. When they contracted with the union for a particular project in November 1991, they received the contract based on their representation that they were a union contractor and would abide by the contract. After work began, the company announced that they were going nonunion and repudiated the contract. The issue in the case was whether adoption by conduct principles apply to 8(f) contracts as well as 9(a) contracts. It was determined the principles do apply and that, in essence, having benefitted from the contract, the employer was stopped from then repudiating it. There is no similarity between that situation and the instant case.

In *Arco*, the respondent was an electrical contracting company that executed periodic assents, over a 15-year period, to be bound by association contracts with the Local. When one contract was modified to increase the contributions to various union funds, the employer ceased making payments to the union funds. The Board found that the employer was estopped from repudiating the contract, based on its conduct in availing itself of the benefits of the union hiring hall, deducting and remitting dues to the union as well as contributions to various union funds, and paying employees according to the contract terms. This situation is akin to that in *E.S.P.,* above, but not to the instant case.

The General Counsel also relies upon *Asbestos Workers Local 84 (DST Insulation, Inc.)*, 351 NLRB 19, 20 (2007). It is similar to *E.S.P.* and has no bearing on the instant situation. Therein, the Board found that the employer had adopted the master agreement although the parties did not reduce to writing their intent to be bound, in that it complied with significant substantive terms of the contract, held itself out as a union contractor, and obtained the benefits of a union contractor.

The instant situation is distinguishable from *300 Exhibit Services & Events, Inc.,* 356 NLRB No. 66, at 6 (2010), cited by the General Counsel. The Board adopted the Administrative Law Judge's decision finding the employer applied all contract terms, and "everything Respondent did . . . reflected that it applied the terms and conditions of the union's contract . . ." The Administrative Law Judge further found that the employer was simply seeking a minor side agreement to the contract, which is not the case here.

Unlike *Brookville*, the Respondent did not comply with all the terms of the predecessor's collective-bargaining agreement but one. In fact, the Respondent did not comply with most of the Corizon terms. Unlike *Brookville*, the Respondent immediately implemented its own benefits, and unlike *Brookville*, the Respondent immediately began negotiating with the Union over the terms of a new contract.

Unlike *Eklund*, the Respondent did not tell the employees outright that the old contract terms would be honored. While Gedman stated to the Union that the Respondent would honor the contracts, she simultaneously advised that it would offer its own benefits. Unlike *Eklund*, prior to the takeover, the Respondent provided employees with its handbook and other information setting forth the new terms of employment. Unlike *Eklund*, the Respondent began negotiating new contract terms prior to the takeover.

Unlike *U.S. Can*, the Respondent never indicated that the terms of the prior collective-bargaining agreements would continue in effect until a new contract was reached. On the contrary, Gedman expressly stated that the Respondent would not provide the same benefits as Corizon, and explained to the Union and the employees what its benefits were. It implemented those policies from the outset.

As noted in *Resco* and *U.S. Can*, either the entire contract is adopted or none of it is adopted. In this case, the Respondent did not adopt the entire contract, and the Union rejected the Respondent's counteroffer to substitute its benefits for Corizon's. The Union also sought to renegotiate some terms after learning about the Respondent's policies. The parties engaged in negotiations, beginning in December 2012, prior to the takeover, and those negotiations continued into 2013. As tentative agreements were reached in 2013, McCormick attempted to have each implemented immediately; however, Gedman refused to implement any changes until a complete contract was reached, saying there was no contract until they agreed to all contract terms. The negotiations did not result in a complete agreement.

Accordingly, I find that the Respondent did not adopt the predecessor collective-bargaining agreements and thus did not violate Section 8(a)(5) and (1).

B. Did the Respondent make unilateral changes without notifying the Union and affording it an opportunity to bargain when it announced that the day after Thanksgiving was no longer a paid holiday and replaced it with Veterans Day?

It is well-established held that an employer must notify and consult with a union representing its employees before imposing unilateral changes in wages, hours, and terms and conditions of employment. See *NLRB v. Katz,* 369 U.S. 736, 743, 747 (1962); and *Bethlehem Steel Co., (Shipbuilding Div.),* 136 NLRB 1500, 1503 (1962). Wages, hours, and terms and conditions of employment are mandatory subjects of bargaining. Paid holidays are thus a mandatory subject of bargaining.

The Respondent had announced the 2013 paid holiday schedule in October 2012, but made a change on October 15, 2013. (R. Exh. 2; GC Exh. 26.) It is undisputed that Gedman did not notify the Union prior to making the decision to substitute Veterans Day for the day after Thanksgiving. While there is also no dispute that the decision to disallow the day after Thanksgiving was made by the Commonwealth of Pennsylvania, not the Respondent, this does not relieve the Respondent of its obligation to bargain.

In *Alan Ritchey, Inc.,* 354 NLRB No. 79 (2009) (remanded on other grounds), the respondent had a contract with the United States Postal Service (USPS). The contract permitted the USPS to change any contract term unilaterally at its discretion. The USPS notified the respondent that Memorial Day and Labor Day were changed from nonworking holidays to working holidays. The Board found that the respondent's hands were tied as to the change itself, but that it had breached its obligation to negotiate over the effects of that change.

In *Long Island Day Care Services*, 303 NLRB 112, 117 (1991), the respondent was a Head Start program under contract with the Department of Health and Human Services (HHS). While the respondent preferred to increase some employees' pay in the interest of fairness, the HHS grant was accompanied by a directive that the money must be distributed equally among all employees. The Board determined that there was no obligation to bargain in this situation, where the respondent was given no discretion whatsoever.

The Respondent presented no evidence regarding the contract between the Respondent and the Department of Corrections that would establish a situation similar to that in *Alan Ritchey*. Nor did the Respondent present evidence of receiving a directive similar to that in *Long Island Day Care*. Rather, Gedman testified that she was told by the Department of Corrections that the day after Thanksgiving could not be a holiday with a skeleton staff. She used her discretion to change the holiday to Veterans Day.

I find, therefore, that the abolishment of the day after Thanksgiving as a paid holiday was merely a matter of client preference on the part of the Department of Corrections. The Respondent was obligated to notify and negotiate with the Union prior to making or announcing a change. Notice of a proposed change must be given sufficiently in advance of the actual implementation of the change to allow a reasonable opportunity to bargain. See *Intersystems Design Corp.*, 278 NLRB 759 (1986); *and Ciba-Geigy Pharmaceuticals Division*, 264 NLRB 1013, 1017 (1982), enfd. 722 F.2d 1120 (3d Cir. 1983). Although Gedman received late notice from the Department of Corrections, her after-the-fact offer to consider McCormick's

suggestions does not satisfy that obligation. The Respondent having presented the Union with a fait accompli, the Union had no obligation to request bargaining. *Gulf States Mfg. v. NLRB*, 704 F.2d 1390, 1397 (5th Cir. 1983); and *Intersystems* Design Corp., above at 760.

Therefore I find that the unilateral change to paid holidays violated Section 8(a)(5) and (1) of the Act as alleged.

CONCLUSIONS OF LAW

1. The Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

2. The Union is a labor organization within the meaning of Section 2(5) of the Act.

3. By making changes to the scheduled paid holidays of the employees in the Chester and Graterford bargaining units without providing the Union prior notice and an opportunity to bargain over proposed changes, the Respondent has violated Section 8(a)(5) and (1) of the Act.

4. The above unfair labor practice affects commerce within the meaning of Section 2(6) and (7) of the Act.

5. The Respondent has not otherwise violated the Act.

REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, I shall order it to cease and desist therefrom and to take certain affirmative action designed to effectuate the policies of the Act.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended[11]

ORDER

The Respondent, Wexford Health Sources, Inc., its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Making changes to the scheduled paid holidays of the employees in the Chester and Graterford bargaining units without providing the Union prior notice and an opportunity to bargain over proposed changes; and

[11] If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Restore the day after Thanksgiving as a paid holiday for the employees in the Chester and Graterford bargaining units and, upon request, bargain collectively with the Union as their representative with respect to any proposed changes to the paid holiday schedule of the employees in the Chester and Graterford bargaining units.

(b) Within 14 days after service by the Region, post at the Chester and Graterford facilities copies of the attached notice marked "Appendix."[12] Copies of the notice, on forms provided by the Regional Director for Region 4, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. In addition to physical posting of paper notices, the notices shall be distributed electronically, such as by email, posting on an intranet or an internet site, and/or other electronic means, if the Respondent customarily communicates with its employees by such means. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since October 15, 2013.

(c) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

IT IS FURTHER ORDERED that the complaint is dismissed insofar as it alleges violations of the Act not specifically found.

Dated, Washington, D.C. September 5, 2014

_____
Susan A. Flynn
Administrative Law Judge

12 If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

APPENDIX

NOTICE TO EMPLOYEES

Posted by Order of the
National Labor Relations Board
An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union
Choose representatives to bargain with us on your behalf
Act together with other employees for your benefit and protection
Choose not to engage in any of these protected activities.

WE WILL NOT do anything to prevent you from exercising the above rights.

WE WILL NOT make changes to your paid holiday schedule without first notifying and bargaining with the National Union of Hospital and Healthcare Employees District 1199C, AFCSME, AFL–CIO (the Union), as the sole and exclusive bargaining representative of our employees.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL restore the day after Thanksgiving as a paid holiday and, upon request, bargain collectively with the Union as your representative with respect to any proposed changes to your paid holiday schedule.

WEXFORD HEALTH SOURCES, INC.
(Employer)

Dated _____ By _____
(Representative) (Title)

The National Labor Relations Board is an independent Federal agency created in 1935 to enforce the National Labor Relations Act. It conducts secret-ballot elections to determine whether employees want union representation and it investigates and remedies unfair labor practices by employers and unions. To find out more about your rights under

the Act and how to file a charge or election petition, you may speak confidentially to any agent with the Board's Regional Office set forth below. You may also obtain information from the Board's website: www.nlrb.gov.
615 Chestnut Street, Suite 710, Philadelphia, PA 19106-4404
(215) 597-7601, Hours: 8:30 a.m. to 5 p.m.

The Administrative Law Judge's decision can be found at www.nlrb.gov/case/04-CA-115974 or by using the QR code below. Alternatively, you can obtain a copy of the decision from the Executive Secretary, National Labor Relations Board, 1099 14th Street, N.W., Washington, D.C. 20570, or by calling (202) 273-1940.

THIS IS AN OFFICIAL NOTICE AND MUST NOT BE DEFACED BY ANYONE

THIS NOTICE MUST REMAIN POSTED FOR 60 CONSECUTIVE DAYS FROM THE DATE OF POSTING AND MUST NOT BE ALTERED, DEFACED, OR COVERED BY ANY OTHER MATERIAL. ANY QUESTIONS CONCERNING THIS NOTICE OR COMPLIANCE WITH ITS PROVISIONS MAY BE DIRECTED TO THE ABOVE REGIONAL OFFICE'S COMPLIANCE OFFICER, (215) 597-5354.